

1 activities. Plaintiff said that he was living in his car because he was in the middle of a
2 dispute with his neighbor. Smith asked plaintiff to step out of the car so that he could speak
3 with him. When plaintiff got out of the car, he realized that four additional officers and two
4 additional patrol cars were present. The lights on the patrol cars were flashing. Smith asked
5 plaintiff for permission to search his car. Plaintiff responded, "I am going to say that you
6 may, but under serious protest." DSOF ¶ 16. Plaintiff was told to have a seat on the curb
7 during the search. Several officers apparently asked him questions while he was waiting.

8 After Smith completed a search of the passenger compartment, he asked plaintiff to
9 open the trunk. Plaintiff opened the trunk and the bags that were in it. Coven Deposition at
10 58. He was then allowed to leave, about forty minutes after the officers arrived. Later that
11 night, officers allegedly searched Google and a National Crime Information Center database
12 using plaintiff's name.

13 According to plaintiff, the Chandler Police Department revised its disciplinary policy
14 in January 2007 to allow supervisors, rather than a "Professional Standards Section," to
15 review complaints of police misconduct. Amended Complaint at 9. He alleges that the
16 policy change led to a substantial reduction in the number of sustained complaints. He
17 apparently relies on a newspaper article, a Chandler Police Board hearing transcript, and a
18 Chandler Police Department annual report. PSOF ¶ 27. But he does not offer these
19 documents as evidence.¹

20 Plaintiff alleges that Chandler police officers violated his Fourth Amendment right
21 to be free from unreasonable searches and seizures. He also alleges that he was deprived of
22 equal protection under the Fourteenth Amendment. Moreover, plaintiff asserts that the
23 alleged database query "may have violated State and Federal law." Amended Complaint at
24 9. He claims that defendant is liable under the Civil Rights Act of 1871, 42 U.S.C. § 1983,
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26 ¹For this reason, defendant's hearsay objection to plaintiff's reliance on the newspaper
27 article is moot. Defendant also objects to many of plaintiff's statements of fact based on a
28 lack of evidence. We consider the sufficiency of plaintiff's evidence in the context of
defendant's motion for summary judgment.

1 because its disciplinary policy was the moving force behind the officers' actions.

2 II

3 The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides a remedy for individuals
 4 deprived of federal civil rights by state actors. A municipality may be liable for a deprivation
 5 that it causes, but it cannot be liable solely because it employs someone who causes a
 6 deprivation. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691, 98 S. Ct. 2018, 2036 (1978).
 7 To prevail, plaintiff must show that a Chandler police officer deprived him of a right
 8 protected by the Constitution or laws of the United States and defendant had a municipal
 9 policy or custom that was the moving force behind the officer's actions. See Conn v. City
 10 of Reno, 591 F.3d 1081, 1102 (9th Cir. 2010). Plaintiff relies on defendant's disciplinary
 11 policy and contends that it "created a persistent failure to discipline within the department."
 12 Response at 3. "Where a plaintiff claims that the municipality has not directly inflicted an
 13 injury, but nonetheless has caused an employee to do so, rigorous standards of culpability
 14 and causation must be applied to ensure that the municipality is not held liable solely for the
 15 actions of its employee." Bd. of Cnty. Comm'rs. v. Brown, 520 U.S. 397, 405, 117 S. Ct.
 16 1382, 1389 (1997). Because plaintiff claims that defendant is liable under § 1983 for failing
 17 to address an allegedly deficient policy, he must also show that defendant's disciplinary
 18 policy amounted to "deliberate indifference." See Conn, 591 F.3d at 1102. The deliberate
 19 indifference standard is only met where a municipal actor disregards a known or obvious
 20 consequence of his decision not to act, "namely, a violation of a specific constitutional or
 21 statutory right." Brown, 520 U.S. at 409, 117 S. Ct. at 1391.

22 Defendant challenges plaintiff's ability to show a municipal policy. It points out that
 23 plaintiff fails to offer any evidence concerning defendant's disciplinary policy. As noted
 24 above, the three documents plaintiff mentions in his statement of facts, a newspaper article,
 25 a hearing transcript, and an annual report, are not in the record. PSOF ¶ 27. Because
 26 plaintiff lacks evidence to support an essential element of his claim, defendant is entitled to
 27 summary judgment.

28 Even assuming that plaintiff could support his allegations involving defendant's

1 disciplinary policy, defendant contends that plaintiff cannot show a causal link between a
2 policy and an alleged deprivation. We agree. To be the moving force behind the violation
3 of a federal right, the failure of a policy must be “closely related to the ultimate injury.”
4 Conn, 591 F.3d at 1103 (quotation omitted). Plaintiff’s theory of causation is insufficient as
5 a matter of law because it is too general. He alleges that defendant changed its disciplinary
6 policy by allowing supervisors to review citizen complaints rather than a “Professional
7 Standards Section.” Amended Complaint at 9. According to plaintiff, this change led to
8 fewer sustained complaints of police misconduct and allowed Chandler police officers to
9 violate his federal rights without fear of discipline. However, plaintiff fails to show any
10 relationship between supervisors reviewing complaints or a decrease in sustained complaints
11 and unlawful searches or seizures. Plaintiff’s § 1983 claim fails because he cannot show
12 causation.

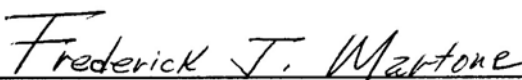
13 Similarly, plaintiff cannot show that defendant disregarded a known or obvious risk
14 that its disciplinary policy would cause violations of specific constitutional or statutory
15 rights. He does not offer evidence that defendant was aware of any unlawful searches or
16 seizures. An unlawful search or seizure is by no means an obvious consequence of having
17 supervisors review complaints or a reduction in sustained complaints. Thus, plaintiff’s
18 § 1983 claim also fails because he cannot show that defendant was deliberately indifferent.

19 In Brown, the United States Supreme Court warned that failing to adhere to standards
20 of causation and culpability would allow municipal liability under § 1983 to collapse into
21 liability based solely on employment. 520 U.S. at 415, 117 S. Ct. at 1394. These standards
22 would be meaningless if a municipality could be liable for its employees’ actions based on
23 an administrative change to a disciplinary policy which leads to fewer sustained complaints.
24 Because plaintiff cannot show a policy, causation, or culpability, we grant defendant’s
25 motion for summary judgment. Defendant’s remaining contentions concerning the
26 constitutionality of its employees’ actions and the propriety of injunctive relief are moot.

27 Accordingly, **IT IS ORDERED GRANTING** defendant’s motion for summary
28 judgment (doc. 73).

1 The clerk shall enter final judgment in favor of defendant and against plaintiff.

2 DATED this 6th day of October, 2010.

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5 Frederick J. Martone
6 United States District Judge
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